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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,604	01/27/2004	Karla E. Williams	460.1844USV1	3398

7590 06/22/2009  
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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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06/22/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/766,604

**Applicant(s)**

WILLIAMS, KARLA E.

**Examiner**

Lynne Anderson

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-25, 27-33, 39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-25, 27-33, 39 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 27 March 2009 have been fully considered but they are not persuasive.
2. In response to the applicant's argument that Schone is directed to an absorbent article comprising bentonite clay not zeolite, it is noted that Schone discloses in column 1, lines 39-42, that zeolite is a suitable, though not preferred, odor control material. Therefore, Schone discloses distributing zeolite in solid (i.e. granular) form on a nonwoven web. While Schone discloses bentonite clay as the preferred odor control material, it is noted that disclosed examples and preferred embodiments do not constitute a teaching away from non-preferred embodiments (see MPEP 2123(II)).
3. It is noted that Schone's disclosure in column 1, lines 47-65, is not describing a mixture of zeolite and bentonite as the odor control material, but rather comparing the amount of material that must be used when using bentonite instead of zeolite.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 23 is rejected under 35 U.S.C. 102(e) as being anticipated by Schone (6,175,055).

6. Schone discloses a method of incorporating zeolite into a tampon, as described in column 1, lines 39-42, and column 2, lines 27-29. The method comprises distributing zeolite granules 8 on a first nonwoven web 6 and bonding a second web 6 to the first web, as disclosed in column 2, lines 52-56.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 24-25 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schone (6,175,055) in view of Kramer et al. (5,165,152).

9. With respect to claims 24-25, Schone discloses all aspects of the claimed invention with the exception of the step of cutting the webs prior to forming the tampon. Kramer teaches the method of forming a tampon by cutting a web to form the tampons, as described in column 10, lines 41-48. This method allows for the high-speed mass production of tampons, as described in the Abstract. It would therefore be obvious to one of ordinary skill in the art at the time of invention to form the tampons of Schone using the step of cutting taught by Kramer to allow for high-speed mass production of the tampons.

10. With respect to claim 40, Schone discloses all aspects of the claimed invention with the exception of each of the strips having at least 0.03 grams of zeolite therein. The amount of zeolite applied to the strips is considered a result-effective variable because the amount of zeolite is a direct result of how much zeolite is applied to the strips. It would have been obvious to one of ordinary skill in the art at the time of invention to provide the strips with at least 0.03 grams of zeolite, since it has been held that where the general condition of the claims are disclosed in the prior art (i.e. the method of application of zeolite to an absorbent article for odor absorption), finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

11. Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schone (6,175,055) in view of Kramer et al. (5,165,152), and further in view of Marcus et al. (4,826,497).

12. Schone, as modified by Kramer, discloses all aspects of the claimed invention with the exception of the zeolite being clinoptilolite. Marcus teaches the use of zeolite as an odor absorbent in absorbent articles such as tampons, as disclosed in column 1, lines 8-16 and 60-65. Marcus discloses that natural zeolites such as clinoptilolite provide preferred odor suppression, as described in column 3, lines 22-34. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the tampon of Schone with clinoptilolite, as taught by Marcus, to provide improved odor suppression.

13. Claims 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schone (6,175,055) in view of Kramer et al. (5,165,152) and Marcus et al. (4,826,497), and further in view of Hoyes et al. (6,030,608).

14. Schone, as modified by Kramer and Marcus, discloses a tampon comprising the natural zeolite clinoptilolite, but does not disclose the type of clinoptilolite. Hoyes teaches that clinoptilolite has the chemical name of potassium aluminosilicate. The amount of potassium and the density of clinoptilolite are inherent to the chemical structure of the compound. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the tampon of Schone with potassium aluminosilicate clinoptilolite, since this is the chemical name of clinoptilolite, as evidenced by Hoyes.

15. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schone (6,175,055) in view of Marcus et al. (4,826,497).

16. Schone discloses all aspects of the claimed invention with the exception of the size of the particles of zeolite. Marcus teaches the use of zeolite as an odor absorbent in absorbent articles such as tampons, as disclosed in column 1, lines 8-16 and 60-65, and further teaches a suitable size for the zeolite particles of about 500 microns. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the tampon of Schone with zeolite particles having a size of 500 microns, as taught by Marcus, to provide zeolite in a suitable size for use as an odor absorbent in a tampon.

***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./  
Examiner, Art Unit 3761  
/Kevin C. Simons/  
Supervisory Patent Examiner, Art Unit 3767